IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1807 OF 2005

Vijay Vasant Prasae & Anr. ..Petitioners.

V/s.

State of Maharashtra. ..Respondent.

Mr.Surel S. Shah for petitioner.

Mr.Rajesh More, APP for State.

CORAM: A.M.KHANWILKAR,J

DATE : DECEMBER 5, 2005.

P.C. :

1. Heard counsel for the parties. Perused the relevant documents on record and the certified copy of the roznama of the trial court produced before me.

2. The first grievance is that the trial court has committed manifest error in framing charge without hearing the petitioner accused. However, to my mind, the grievance of the petitioner is not substantiated. This is so because, the roznama for 27th January, 2005 clearly mentions that the accused as well as his advocate were present in the court. On the relevant date charge was framed against the accused (Exh.21) and statement of accused (Exh.22 and 23) came to be recorded. There is nothing on record

to show that the lower court refused to hear the petitioners on the charge, which was proposed to be framed. No such request was made by the petitioners before the trial court either themselves or through advocate. It is too late in the day for the petitioners to make such grievance before the superior court. Besides, in this case the record indicates that even recording of evidence has progressed. Viewed in this perspective, I find no substance in the grievance made on behalf of the petitioners.

3. It is seen from the charge as framed that the charge was read over and explained to both the accused in vernacular as per the endorsement made by the trial court at the end of the charge. There is no reason to doubt the correctness of that position, which is evident from the roznama as well as the copy of the charge produced.

4. The next grievance of the petitioners is that the charge as framed cannot be tried. The tenor of the charge firstly is as if it was a civil dispute, which gives rise to the the criminal action against the petitioners. The petitioners may be justified to the limited extent that the charge merely refers to

section 420 and for invoking that provision the charge mentions that accused has dishonestly violated terms of agreement which is foundation of allegation to proceed against the petitioners. It is well settled that the charge can be reframed at any stage of the proceedings. It would have been a different matter if the entire trial could have been terminated on accepting this contention of the petitioners. The trial nevertheless will proceed in so far as the charge under section 506 r/w 34 of the I.P.Code. In the event necessary evidence to make out charge under section 420 comes on record, it will be open to the trial court to reframe charge and proceed against petitioners even in respect of offence under section 420 of the I.P.C. Viewed in this perspective, no interference is warranted. Hence dismissed.